

No. 9/5/84-6Lab/7171.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, in respect of the dispute between the workmen and management of Haryana Roadways, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 43 of 1982

Between

SHRI KUL BHUSHAN, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS, ROHTAK.

Present—

Shri S. N. Vats, A. R. for the workman.

Shri S. C. Singla, L. A. for the management.

AWARD

1. An industrial dispute reproduced below, having arisen between the workman Shri Kul Bhushan and the Management of Haryana Roadways, Rohtak, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the same, to this Courts for adjudication,—vide Labour Department Gazette. Notification No. ID/RTK/156/81/7805, dated the 23rd February, 1982 :—

Whether the termination of service of Shri Kul Bhushan was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was appointment as Ticket Verifier by the respondent on 2nd December, 1976 and remained employed as such till 31st May, 1981, after which date, his services were terminated illegally without notice of payment of any compensation as envisaged under section 25-F of the Industrial Disputes Act, 1947.

3. A reply was filed by the respondent. It is alleged there in that the workman was employed on daily wages as per rates fixed by the Deputy Commissioner, Rohtak and the workman was not taken on duty after 31st May, 1981 and as his period of service was not extended thereafter. It is further alleged that the case of the workman is covered under the proviso appended to section 25-F(a) of the Industrial Disputes Act, 1947, which provides that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service.

4. On the pleadings of the parties, the following issue was settled for decision on 1st September, 1982 :—

1. Whether the termination of service of Shri Kul Bhushan was justified and in order? If not, to what relief is he entitled?

5. My findings on the issue framed are as below :—

Issue No. 1 :

6. To prove this issue, the management examined MW-1 Shri Satinder Singh, clerk, Haryana Roadways, Rohtak, who stated that the workman was employed as Ticket Verifier on 2nd December, 1976 on daily wages by the General Manager, Haryana Roadways, Rohtak and that his services were extended from time to time,—vide orders Exhibit MW-1/1 to Exhibit MW-1/23 and that he was paid daily wages as per the rates fixed by the Deputy Commissioner, Rohtak. The workman appeared his own witness and substantially reiterated the allegations made in the Claim Statement and as such, I need not suffer repetition.

7. The learned representative of the management Shri S. C. Singla contended that the case of the present workman stands fully covered under the proviso appended to section 25-F(a), which reads as under :—

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of services.

8. Basing his contention upon this proviso, Shri Singla contended that since the employment of the workman was for a fixed period, which expired on 31st May, 1981, so, there was no necessity of giving prior

notice or retrenchment compensation to the workman. In the same vein he admitted (he could not have denied that the workman remained employed with the respondent for more than 240 days, because the workman remained employed from 2nd December, 1976 to 31st May, 1981. He sought fortification to his contention from the observations made in 1981 Lab. I. C. 1129 S. R. Papanna *versus* Union of India and another. In my opinion, the learned representative of the respondent mis-read the ratio of the authority under reference. There is not a iota of evidence on record that there was ever an agreement with the workman regarding the extensions given to him. Extension of the service was granted to the workman by the respondent suo-moto. He worked with the respondent for more than 4 years. In 1980-II LLJ pages 72 Santosh Gupta *versus* State Bank of Patiala, it has been held that even if an employee has worked for 240 days, with gaps in service in the last 12 calendar months, his services cannot be terminated without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947. The case of the present workman is not covered under the proviso appended to section 25-F(a) of the Industrial Disputes Act, 1947, because there was no agreement with the workman at the time when extension in service (which are numerous in number) were granted to the workman,—vide orders copies of which are, Exhibit MW-1/1 to Exhibit MW-1/23. So the crux of my foregoing discussion is that the service of the workman was terminated illegally without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 and as such the said order is void, ab initio and so the workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order to costs.

Dated the 13th September, 1984.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 43/82/3255, dated the 1st October, 1984

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/7202.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and management of M/s. Precision Auto Industries, Plot No. 375, Sector 24, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA
FARIDABAD

Reference No. 325/1982.

between

SHRI SAJJAN SINGH YADAV WORKMAN AND THE MANAGEMENT OF M/S PRECISION
AUTO INDUSTRIES, PLOT No. 375, SECTOR-24, FARIDABAD.

Present —

Shri L. N. Yadav, for the workman.

Shri R. C. Sharma, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Sajjan Singh Yadav Workman and the management of M/s Precision Auto Industries, Plot No. 375, Sector-24, Faridabad, to this Tribunal, for adjudication :—

Whether the termination of service of Shri Sajjan Singh was justified and in order? If not, to what relief is he entitled?

Notices were issued to both the parties. The claimant in his claim statement dated 1st October, 1982, stated that he was working with the respondent management since 27th July, 1976 and his last wages were Rs. 450 per month and further that his work was meritorious. It was then alleged that no letter of appointment was issued to him and that the management did not issue wages slip, leave book, identity card, attendance card etc., and used to obtain signatures on blank papers etc. It was then alleged that the claimant fell ill on 18th February, 1982 due to which he did not go to the factory and went there on 20th February, 1982 but he was stopped at the gate of the factory and was asked to collect his dues on 8th March, 1982. The claimant further alleged that he continuously attended his duty at the gate of the factory on 8th March, 1982, the Management obtained his signatures on some blank papers and documents under duress and did not pay any amount to him. It was further alleged that no charge-sheet was issued and that the termination of services was illegal and that no retrenchment compensation etc. had been paid to him. He further alleged that the claimant was entitled to reinstatement with full back wage.

3. The Management in their written statement dated the 13th October, 1982 pleaded that on 31st October, 1982, the claimant was not in the employment of the respondent but, on the other hand, he remained under their employment upto 30th October, 1980 and thereafter the Management had nothing to do with the claimant. It was further pleaded that the management however, had knowledge that the claimant was working in a nother concern, which was situated in the same premises and was working under name and style of Durga and Co., which was an independent concern and was quite separate from the respondent management in all respects having different constitution of its own. It was then pleaded that the claimant was not entitled to any relief against the respondent management.

4. The claimant in his rejoinder dated the 8th November, 1982 reiterated the pleas taken in the claimant statement and averred that he had no knowledge of Durga and company, but, on the other hand, he was the employee of the respondent management.

5. On the pleadings of the parties, the following issues were framed on 8th November, 1982:—

- (1) Whether the workman was not in the employment of the Management ? OPM
- (2) Whether the termination of service of Shri Sajjan Singh was justified and in order ? If not, to what relief is he entitled ? O. P. M.

6. The management has examined one witness and documents Exhibit M-1 and M-2, have been tendered into evidence. The claimant has examined two witnesses and documents, Exhibit W-1 to W-4, have been tendered into evidence. After going through the evidence and hearing both the parties, my findings on the above issues are as under :—

Issue No. 1 :

7. Shri Sajjan Singh workman appeared as WW-1 and stated that he was employed by the respondent on 27th July, 1976 as Grinderman and was drawing Rs. 450 per month when he was not allowed to join duty on 20th September, 1982. He further stated that no appointment letter was issued to him and that Exhibit W-1 was the photo stat copy of the E. S. I. card. He further stated that no attendance card was given to him. He then stated that Exhibit W-2 was issued by the respondent. He stated Exhibit W-4 was the original receipt while Exhibit W-3 was the photo stat copy of the receipt by which the cycle was purchased by the claimant through the respondent. WW-2 Shri Om Parkash stated that in the year 1981, he was working with the respondent and that the claimant used to served in that factory and not in any other company. He further stated that his signatures were also obtained by the Management on blank forms and that no attendance card or leave book were supplied to the workman by the respondent.

8. The Management has examined its proprietor Shri S. C. Aggarwal as MW-1 who stated that he had brought the payment of wages register and attendance register for the year 1980 and that the claimant left the services of the respondent management on 31st October, 1980 when a sum of Rs. 1225 was paid to him on that date, in the presence of Shri Bijinder Singh. He further stated that he identified the signatures of the claimant on the voucher Exhibit M-1. He then stated that the cycle was given and financed by the bank, but not by the management which however stood guarantor. He then stated that after 1980 the workman was engaged by Shri Radha Kishan Contractor, who was working under the name and style of Durga and Company and the wages were paid to the claimant by the said contractor and his attendance was also marked by the contractor. He then stated that the contractor could engage his workmen at any place where he liked and that the contractor had left the contract of the respondent in February, 1984 and had settled his accounts with the workman engaged by him. He then stated that the letter Exhibit W-2 was issued by the respondent so that the police did not harass the person working in the respondent factory and that the names of all the workmen employed by the Respondent as well as contractor were given. He further stated that Shri Om Parkash workman remained in their factory for some period after the claimant had left their factory and that E. S. I. returns regarding workers engaged by the Contractor were sent by the respondent according to the law.

9. A perusal of the above evidence would show that the claimant has deposed as WW-1 that he joined the services of the respondent from 27th July, 1976 and he was not allowed to join duty on 20th February, 1982

and that no compensation etc. or any other amount paid to him. His version is corroborated by Shri Om Parkash who deposed that in the year 1981, the claimant was working with the respondent. The testimony of Shri S. C. Aggarwal MW-1 is however to the effect that the claimant remained in their employment upto 31st October, 1980 and thereafter he joined the services of M/s. Durga and Company which was being run by Shri Radhia Kishan Contractor and that the respondent Management had no concern with the said contractor. The voucher Exhibit M-1 has been produced by the Management, in which it is recited that Rs. 1,225 were paid to the claimant on 31st October, 1981. The claimant has further deposed that his signature were obtained on a blank document and that no amount was paid to him. The signatures have not been affixed on the revenue stamp. If the amount had been paid to the claimant on 31st October, 1980, the signatures would have obtained on the revenue stamp. The claimant had clearly deposed that his signatures were obtained on a blank paper. Moreover Shri Bijinder Singh in whose presence the amount has been paid, has not been produced by the management to corroborate the testimony of Shri S. C. Aggarwal (MW-1). This document, therefore, does not help the Management. Further Exhibit W. 1 is the certificate dated the 20th August, 1981 in which it is recited that the claimant alongwith other persons was working with the respondent in the night shift. This letter demolishes the case of the respondent that the claimant was working under Durga and Company after 31st October, 1980. The explanation given by Shri S. C. Aggarwal MW-1 to the effect that this document included the names of workmen employed by the contractor as well as the Management, cannot be accepted because there is no mention about it in the letter Exhibit W-2, but on the other hand, in this document it is clearly mentioned that the claimant was working under the respondent in the night shift. Further, the E. S. I. Card has been produced by the claimant which does not show that the claimant was serving under M/s. Durga and Company. Moreover, the receipt Exhibit W-4 dated the 15th January, 1981 was issued in the name of State Bank of India, Faridabad on account of the claimant C/o M/s Precision Auto Industries. This document also shows that on the 15th January, 1981, the claimant was in service of the respondent. Moreover, if the claimant was not in service of the respondent on that date, the respondent would not have stood guarantor for the claimant for purchasing the cycle. Besides, MW-1 Shri S. C. Aggarwal stated in cross-examination that the payment of wages register was maintained by them and that some times he made entries therein while some times in his absence, the next senior man used to make entries and that the attendance had been marked in his own hand. If M/s. Durga and Company were a different concern as pleaded by the respondent in the written statement, there was no necessity for the respondent to maintain the register of payment of wages of M/s. Durga and Company. Moreover, no document has been produced by the respondent to show that they entered into an agreement with M/s. Durga and Company. Further no document have been produced by the respondent to show that M/s. Durga and Company was ever registered under the provision of the Factories Act, 1948, when is alleged that the number of its workmen was more than 10. In any case there was no occasion for the claimant to leave the job of the respondent where he was serving since 1976 regularly and was getting Rs 450 per month and would join, M/s. Durga and Company a Rs. 350 per month because in the claim statement, the claimant stated his wages as Rs. 450 per mensem which fact was not specifically denied in the written statement. Under all these circumstances, the respondent has failed to prove that the claimant was not in their employment upto 20th February, 1982. The issue is decided accordingly against the management.

Issue No. 2 :

10. In view of the findings on issue No. 1, the termination of services of the claimant by the respondent was illegal because the provisions of section 25-F of the Industrial Disputes Act, 1947 were not complied with in as much as no notice pay and compensation were paid to the claimant at the time of termination. In the ruling reported as Delhi Cloth and General Mills Co. Ltd. *versus* Shambhu Nath Mukherji and others, 1977-Lab I. C. 1695, it is laid down that where the mandatory provisions of Section 25-F of the Industrial Disputes Act were not complied with the order was invalid. Consequently the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated the 24th September, 1984.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 988, dated the 24th September, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.